

With regard to the award of temporary total disability compensation the Appeals Board finds this is not an issue appealable to the Appeals Board from a preliminary hearing Order pursuant to either K.S.A. 44-534a, as amended, or K.S.A. 44-551, as amended. As such, this finding will not be disturbed by the Appeals Board.

With regard to whether claimant suffered accidental injury arising out of and in the course of her employment, the Appeals Board finds claimant has carried her burden in this regard and the Order of the Administrative Law Judge should be affirmed for preliminary hearing purposes.

Claimant alleges accidental injury on May 27, 1997, when she struck her hip or back on a bed rail while changing the Depend on a patient. While there is contradictory evidence contained in the emergency room medical records and the records of Dr. Ronald Davis, there is sufficient evidence that claimant suffered some type of work-related injury on the date alleged to satisfy the claimant's burden.

Under K.S.A. 44-501 and K.S.A. 44-508(g), as amended, it is claimant's burden to prove her entitlement to benefits by proving the various conditions upon which her right depends by a preponderance of the credible evidence. The Appeals Board finds, for preliminary hearing purposes, that claimant has satisfied that burden.

The Appeals Board, therefore, finds that the Order of Administrative Law Judge John D. Clark granting claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated September 18, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1997.

BOARD MEMBER

c: Paul D. Leader, Wichita, KS
Stephen J. Jones, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director